UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUN CAB, INC. d/b/a
NELLIS CAB COMPANY

and **Case 28-CA-079813**

ABIY AMEDE, an Individual

BRIEF IN SUPPORT OF ACTING GENERAL COUNSEL'S EXCEPTIONS

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I. INTRODUCTION

In his decision, the Administrative Law Judge (the ALJ) erred by failing to address the Section 8(a)(1) allegation that Sun Cab, Inc. d/b/a Nellis Cab Company (Respondent) violated the Act by threatened its employee with discharge for participating in a strike during his shift to discuss and protest the number of taxicabs permitted by the Nevada Taxicab Authority (TA) and the resulting decline in income for employees. The ALJ found that 17 drivers engaged in a protected concerted strike on February 4, 2012,[1] when drivers from the 16 different Las Vegas taxi companies took their cabs out of service to protest the potential increase in the number of Las Vegas taxis. (ALJD 2:30-43; 5:26-34)[2] The ALJ made factual findings regarding the meeting between Respondent's Owner Ray Chenoweth (Chenoweth) and taxicab driver Abiy Amede (Amede) where Amede was given a suspension and a final warning for engaging in the strike, and that Chenoweth asked Amede how long he worked for Respondent and whether he liked working for Respondent, but failed to issue a ruling on the

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1 All dates are in 2012, unless otherwise noted.

2 ALJD__:_ refers to page followed by line or lines of the ALJ's decision in JD(SF)-57-12 (Dec. 27, 2012); GCX___ refers to General Counsel's Exhibit followed by exhibit number; JTX ___ refers to Joint Exhibit followed by exhibit number; "Tr. _:__" refers to transcript page followed by line or lines of the unfair labor practice hearing held September 25 and 26, 2012.

allegation. (ALJD 3:16-19) The Board should find that, in the context of calling Amede to the office to issue a suspension and final warning for engaging in the protected strike, and specifically by asking him how long he worked for Respondent and whether he liked working for Respondent, the Respondent threatened its employee with discharge for participating in the protected strike as alleged in the complaint.

The ALJ also erred by failing to find that, during the same conversation, Respondent threatened Amede with a loss of benefits including Christmas bonus for engaging in the protected strike in violation of Section 8(a)(1) of the Act. The ALJ found that Chenoweth asked whether Amede received a Christmas bonus, but failed to address the allegation in his decision. (ALJD 3:18-19) The Board should find that, in the context of the disciplinary meeting previously described, and specifically by asking Amede whether he had received a Christmas bonus in that setting, the Respondent threatened its employee with loss of benefits including Christmas bonus for participating in the protected strike as alleged in the complaint.

Third, the ALJ erred in failing to find that Respondent discharged Amede because of his Union activities in violation of Section 8(a)(1) and (3) of the Act. The ALJ found that Counsel for the Acting General Counsel (the General Counsel) established a prima facie case that Amede was discharged because of his Union activities, but found that Amede's discharge was consistent with the discharge of other employees involved in accidents in 2012, and that he would have been discharged in the absence of his Union activities. (ALJD at 6:49-50; 7:13-17) The ALJ's cursory explanation simply states that "Respondent began terminating employees for frequent accidents[,]" but failed to analyze disparate treatment including the number of drivers who were given leniency in response to multiple accidents in 2012, and that Amede received no leniency in spite of a single minor accident in 2012, which was found to

be not his fault. (ALJD 7:10-14) The Board should find that Respondent did not meet its burden of showing that it would have terminated Amede in the absence of his Union activity in light of the disparate treatment in comparison to other drivers, and that Respondent violated Section 8(a)(1) and (3) of the Act by discharging Amede for his Union activities as alleged.

Finally, the ALJ failed to specify in the Remedy and Order that Respondent must expunge all discipline issued as a result of the protected strike. The ALJ found that Respondent took actions against its 17 drivers involved in the strike, including suspensions, final written warnings for taking more than an hour lunch break, and warnings to some for falsifying their trip sheets. (ALJD 2:47-48, 3:1-2, 10-13) The ALJ stated in the Remedy that Respondent was "required to expunge any and all references to its unlawful suspensions" and in the Order that Respondent "remove from its files any reference to the unlawful suspensions" and that "the discipline will not be used against them in any way" but failed to address the warnings issued for the "falsified" trip sheets. (ALJD 7:45-46; 8:28-30) The ALJ made no mention of the testimony of General Manager Jami Pino (Pino) that the trip sheets are not normally reviewed with the attention given to the trip sheets of the 17 drivers, or the fact that numerous documents were introduced, and to which Pino testified, each of which had "falsification" on its face, but yet Respondent did not issue discipline for falsification. The Board should find that the warnings for trip sheet "falsification" would not have issued but for the protected concerted strike, and that Respondent should be required to expunge the warnings issued to those drivers for their participation in the protected strike.

II. FACTS

A. Respondent's Operations

Respondent is a corporation with an office and place of business in Las Vegas, Nevada, and is engaged in the operating of a taxicab business. (ALJD 2:5-6; GCX 1(e), (h))

Respondent is owned by Chenoweth and is managed by Pino. (ALJD 3:10-11, 17; GCX 1(e), (h)) Respondent's business is one of 16 taxicab services in the Las Vegas metropolitan area. (ALJD 2:16-17) The number of taxicabs permitted to operate in the Las Vegas area is controlled by the number of medallions issued by the Taxicab Authority (TA). (ALJD 2:19-21, 30-34) In early 2012, the TA was considering issuing additional medallions to increase the number of Las Vegas taxi cabs, which prompted discussions among drivers from across the 16 taxicab service companies. (ALJD 2:30-34) The drivers were concerned about the additional taxicabs as they are not paid an hourly wage but are paid based on a split of the fares. (ALJD 2:27-28, 33-34) The fares are determined from "net book" which is calculated from documents called trip sheets. (ALJD 2:27-28) Trip sheets include information about the cab and driver including shift start and end, pickup time and location, destination, fares, and net shift amounts for fares, mileage and fees. (ALJD 2:23-28) According to Pino, any incorrect trip sheet information is considered falsification, including recording an incorrect lunch time or taking passengers during the mandatory one-hour lunch. (Tr. 45:11-25, 46:1-6)

B. Las Vegas Taxi Drivers Strike to Discuss and Protest the Numbers of Taxicabs Permitted in Las Vegas

In response to the potential additional medallions, drivers from the 16 Las Vegas taxicab companies decided to hold an industry-wide extended break to take place on February 4, the day before Super Bowl Sunday. (ALJD 2:30-37) Some of Respondent's drivers participated by driving to a local Ethiopian restaurant where approximately 200 drivers from the 16 companies gathered during the break. (ALJD 2:37-40) While there, the drivers discussed the additional medallions, and some talked to local news crews which arrived at the restaurant. (Tr. 228:7-25; 230:7-14; 231:1-13; 314:13-16) Drivers from the 16 companies decided that part of the extended break would include driving Las Vegas

Boulevard (The Strip), honking their horns and flashing their hazard lights while refusing to pick up customers. (ALJD 2:40-43) The break lasted a total of two to three hours, and all of the drivers subsequently returned their cabs to service and started looking for passengers. (ALJD 2:42-43) Notwithstanding the return of cabs to service and the high demand for taxis the day before the Super Bowl,[3] Respondent ended the shifts early for some of the drivers, even though it lacked replacement drivers to drive the cabs. (ALJD 2:45-47; Tr. 294:3-24; 317:18-22) Because of the drivers' actions, Respondent suspended 17 of its drivers, gave each a final written warning which stated that further conduct would result in termination, and issued warnings for "falsification" of trip sheets to some of them. (ALJD 2:47-48, 3:1-2, 10-13; GCX 11-27)

C. Meeting Between Chenoweth and Amede

As found by the ALJ, when Amede arrived to receive his final warning, Respondent's owner Chenoweth asked him how long he had worked for Respondent and whether he liked working there. (ALJD 3:15-18) Chenoweth also asked Amede if he had received a Christmas bonus. (ALJD 3:18-19) When each of the drivers was called in for their suspension, they were told that this was their final written warning, were asked why they took the long break, and were asked the identity of the leader of the long break. (ALJD 3:10-13)

D. Respondent's Treatment of Accidents

The ALJ found that Respondent faced increased auto insurance costs in November 2011, and adopted an on-line driver safety course to be taken by drivers with frequent accidents, and then started terminating drivers for frequent accidents in 2012. (ALJD 3:35-38; GCX 30(a)-(k)) Specifically, the ALJ found that Respondent terminated 26 drivers

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[3] Respondent collected over $105,000 in fares for the day even with the strike and its removing several cabs from service. (GCX 10(g))

between January 1 and July 31 for accidents, but did not describe the circumstances of any of the drivers who were terminated other than Amede. (ALJD 3:39-42)

The Employee Handbook has several provisions regarding accidents. "Drivers with chargeable at-fault accidents are not eligible for a Safety Bonus." (GCX 2 at 3) "When an accident is determined by the company to be your fault-or to which you largely caused, you may be terminated or be required to pay up to $2,000 for damages to Nellis property and/or any third party property damage claims that are paid by or on behalf of Nellis as well as complete a one-time, *punitive safety training course*, if deemed necessary by management." (GCX 2 at 33) (emphasis added) The Handbook has several provisions regarding discipline, including "[i]n those instances where an employee is not performing satisfactorily, the supervisor with whom the employee is working will meet with the employee to determine what can be done to improve performance. In serious cases, the employee may be placed on performance probation. If improvement is not satisfactory, dismissal may be necessary." (GCX 2 at 16) The November 2011 amendment to the Handbook states that Respondent "may require drivers who are frequently involved in at-fault or not-at-fault accidents to complete a punitive safety training course at the expense of the driver for each incident that they are involved[.]" (GCX 30(a)-(k))

E. Amede's Union and Protected Concerted Activities

Amede was one of 17 drivers suspended for the February 4 strike. (ALJD 3:16-17) Following the strike suspensions, the drivers, including Amede, met with the Industrial, Technical and Professional Employees Union, Local 4873, affiliated with Office and Professional Employees International Union, AFL-CIO (the Union) following Respondent's suspension for the strike. (ALJD 3:19-23) On or about February 16, the Union sent an organizing letter to Respondent informing it that an organizing campaign was underway and

specifically named committee members including Amede. (ALJD 3:20-23; GCX 29(a), (b)) Amede was involved in organizing Respondent's drivers by going to the Union, learning how to organize, attending Union meetings, signing an authorization card, approaching Respondent's drivers and explaining the benefits of unions to them, and asking other drivers to sign cards at the airport, hotels, and near Respondent's yard. On April 18, Amede went to McCarran Airport in Las Vegas on his day off where he passed out information to Respondent's drivers. (ALJD 3:25-27; Tr. 244:4-25, 245:1-19; 246:8-25; 247:7-25, 248:1-4, 17-24; 249:7-25, 250:1-14, 25, 251:1-11; GCX 50; 51(a))

F. Discharge of Amede

The ALJ found that Amede was involved in a minor accident on April 20, and was found not-at-fault for the accident. (ALJD 3:29-33) The damage was so minor that the TA officer who responded to see if the cab could remain in service marked his report as "No Visible New Damage" and noted that Amede was not cited. (Tr. 257:20-25, 258:1; GCX 31(d)) On April 23, Amede was terminated for the stated reason of "too many at fault accidents." (ALJD 3:30-32; GCX 31(a)) The notes from his accident file indicate an at-fault minor accident and "driver term high frequency" without mentioning any other considerations for the termination. (GCX 31(b)) As part of the investigation by the insurance adjuster, the passenger of the other cab reported on April 23, that "the driver of the cab he was riding in cut off the [Respondent] Nellis cab TWICE causing the accident." (GCX 31(g)) Amede's most recent "accident" was November 25, 2011, when a pedestrian ran into his cab, as confirmed by a passenger's report. (Tr. 263:9-14; GCX 31(i), (j))[4]

[4] The transcript should read "The lady ran into me . . . so she jumped onto my cab" (Tr. 263:12-13)

III. ANALYSIS

A. The ALJ Erred by Failing to Make any Finding as to Whether Respondent Threatened its Employee with Discharge for Engaging in Protected Concerted Activities by Participating in a Strike During Their Shifts in Violation of Section 8(a)(1) of the Act [Exception No. 1]

Chenoweth's questions about how long Amede worked there, and whether he liked working there coming from the owner of the company in the company office concurrently with receiving a suspension and final warning, would objectively give an employee such as Amede the impression that his job was threatened. Cf. *Double D Construction Group*, 339 NLRB 303, 303-304 (2003) ("The test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction") An employer's threat does not have to be explicitly stated. *Gaetano & Associates*, 344 NLRB 531, 534 (2005) (finding, contrary to the administrative law judge, that telling an employee to "be careful" talking to the union agent was a unlawful threat of unspecified reprisal) (citing *St. Francis Medical Center*, 340 NLRB 1370, 1383-1384 (2003); *Jordan Marsh Stores Corp.*, 317 NLRB 460, 462 (1995) (supervisor's "watch out" statement was an unlawful implied threat)) The statement how long have you worked here, especially in combination with asking whether he liked working there, creates the logical inference that if he wanted to remain working, then he had better cease his activities or consequences would occur. The Board should find that Respondent violated the Act when Owner Chenoweth asked Amede how long he worked there and whether he liked working there in the context of receiving a suspension and final written warning, that Respondent threatened its employee with discharge for engaging in protected concerted activities as alleged in complaint paragraph 5(c)(1).

B. The ALJ Erred by Failing to Make any Finding as to Whether Respondent Threatened its Employee with Loss of Benefits Including Loss of Christmas Bonus for Engaging in Protected Concerted Activities by Participating in a Strike During Their Shifts in Violation of Section 8(a)(1) of the Act [Exception No. 2]

As previously discussed regarding Exception 1, Chenoweth questioned Amede in the context of issuing a suspension and final written warning to him. Further, as found by the ALJ, Chenoweth asked Amede if he had received a Christmas bonus. (ALJD 3:18-19) Not mentioned by the ALJ was that Chenoweth asked Amede the amount of the Christmas bonus, whether he liked the bonus, and compared the amount to that given by Yellow Checker Star cabs. (Tr. 109:17-25, 110:1; 111:17-25, 112:11-17; 237:25, 238:1-8) When Owner Chenoweth questioning of Amede would objectively give Amede the impression that he was also threatened with loss of his benefits, including the Christmas bonus, as a result of the protected concerted strike the drivers had just completed. The Board should find that Respondent, by Owner Chenoweth, threatened its employees with loss of benefits including Christmas bonus for engaging in the protected concerted strike as allege in complaint paragraph 5(c)(2). Cf. *Double D Construction Group*, 339 NLRB 303, 303-304 (2003).

C. The ALJ Erred by Failing to Find that Respondent Discharged its Employee Abiy Amede Because He Formed, Joined, or Assisted the Union in Violation of Section 8(a)(3) of the Act [Exception No. 3]

Respondent's discharge of Amede was a result of his Union activities as found by the ALJ. (ALJD 6:49-50) However, the ALJ erred by finding that Respondent would have discharged Amede in the absence of his Union activities. (See ALJD 7:13-16) Respondent had shown a past willingness to excuse drivers' accidents, and had only recently attempted to address accidents by requiring drivers to attend a class at their expense. (GCX 30(a)-(k))

Animus "may be inferred from the record as a whole, including timing and disparate treatment." *Kennametal, Inc.*, 358 NLRB No. 108, slip op. at 8 (2012) (citing *Camaco Lorain Mfg. Plant*, 356 NLRB No. 143, slip op. at 4 (2011)). Evidence of suspicious timing, false reasons given in defense, disparate treatment of discriminatees, departure from past practice, and the failure to adequately investigate alleged misconduct all support such inferences. *Adco Electric*, 307 NLRB 1113, 1128 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993); *Naomi Knitting Plant,* 328 NLRB 1279, 1283 (1999); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (7th Cir. 1991), cert. denied 502 U.S. 814 (1991); *Electronic Data Systems Corp.*, 305 NLRB 219 (1991); *Visador Co.*, 303 NLRB 1039, 1044 (1991); *Associacion Hospital Del Maestro*, 291 NLRB 198, 204 (1988); *Clinton Food 4 Less,* 288 NLRB 597, 598 (1988). Timing is a relevant factor in determining a connection between the protected activity and the adverse employment action. *Mid-West Telephone Service, Inc.*, 358 NLRB No. 145 slip op. at 1, 18 (2012) (affirming the administrative law judge's finding that the employer's "timing clearly supports the inference that the [employer] failed to assign additional work" to an employee "shortly after [it] learned that he had given an affidavit and was willing to testify" in violation of Section 8(a)(4)); *Toll Mfg. Co.*, 341 NLRB 832, 833 (2004) (agreeing with the administrative law judge's finding that the employer violated Section 8(a)(3) based on the abruptness of the discipline and its timing which were "persuasive evidence" of motive). Respondent's "failure to conduct a meaningful investigation and to give the employee who is the subject of the investigation an opportunity to explain are clear indicia of discriminatory intent." *New Orleans Cold Storage Co.*, 326 NLRB 1471, 1477 (1998) (affirming without comment the administrative law judge's finding of discriminatory intent based on the

employer's retention of warnings in spite of the employee's explanation of the facts) (citing *K & M Electronics*, 283 NLRB 279, 291 (1987))

Neither the number nor the severity of *any* of Amede's accidents, considered separately or together, appears to warrant discharge, especially considering the prior tolerance Respondent showed to accidents, the lack of any progressive discipline issued to Amede, and the failure of Respondent to allow him to attend the safety courses even if Respondent considered Amede a "high-frequency accident" driver. The difference for Amede was his attempts to improve working conditions for Respondent's drivers by his public appeal to the TA, his participation in the strike, and his attempts to organize Respondent's drivers.

Animus is shown by the disparate treatment Amede received for his single accident in 2012. In comparison to Amede's accident, other drivers had many more accidents, and much more severe accidents than Amede without termination, and several drivers had a high frequency of accidents and *multiple accidents in 2012* prior to their termination. Driver Tefera Damtew was terminated following a June 6 at-fault accident for rear-ending another driver, and had 14 total accidents including accidents on March 22, February 11, a February 5 at-fault accident involving door damage, and a December 8, 2011 accident involving a hit-and-run. (GCX 63(a), (i), (p), (u); RX 7) Driver Isidoro Palmeri only worked for Respondent from January 27 to on or about May 8, before he was terminated for five accidents during his three months of employment even though several accidents occurred during his probationary period. (GCX 65; RX 7) Valko Haralambov was not terminated until on or about March 2, after seven or eight at-fault accidents which resulted in either $33,000 or $18,596 in damages, and four not-at-fault accidents, including recent accidents on January 6, and October 31, 2011. (GCX 60(a) - (e)) Driver Jon Perdomo worked for Respondent for six months, and was

terminated on or about January 25, after an at-fault accident resulting in visible damage to two cars including $988.49 to the other vehicle, and bodily injury claims of $22,500. (GCX 61(a), (e)-(h)) Perdomo had a January 18 at-fault accident where he rear-ended another car resulting in settlement payments of $9,443.86, but he was allowed to pay for the damage and was allowed to attend the Smith System training following his accidents. (GCX 61(i)-(m); RX 7) Thomas Hardy was terminated following a July 11 accident and four preceding accidents which resulted in over $23,000 in damage in the 18 months he worked for Respondent, including accidents on May 15, for an at-fault rear-end where he was allowed to attend the Smith System training, and a February 5 at-fault accident where he was not required to attend the Smith Training. (GCX 64(a), (h), (l), (m)) Respondent retained drivers with a high frequency of accidents, including multiple accidents in 2012. It even allowed probationary employee Palmeri to accumulate five accidents in three months before he was terminated. Respondent terminated Amede after an extremely minor accident which did not require repair and which did not require the vehicle to be taken out of service. Amede had no history of high-damage accidents and was never allowed to take the "punitive" training in order to improve his driving. (GCX 31(a)-(o)) He had no prior suspensions or other progressive discipline for accidents prior to his termination. (Tr. 262:11-25, 263:1-4) In short, Respondent would not have terminated Amede for accidents in the absence of his Union or protected activities. The evidence of disparate treatment and departure from past discipline is evidence of animus sufficient to find animus. Cf. e.g. *Kennametal, Inc.*, 358 NLRB No. 108, slip op. at 8; *Camaco Lorain Mfg. Plant*, 356 NLRB No. 143, slip op. at 4.

Animus should also be inferred by timing as the accident which provided the opportunity to terminate Amede was the first accident Amede had after his several protected

activities including approaching employees at the airport with Union information just two days prior to the minor accident which Amede did not cause. The timing of Amede's termination supports a finding of animus. Cf. *Mid-West Telephone Service, Inc.*, 358 NLRB No. 145; *Toll Mfg. Co.*, 341 NLRB at 833.

Surely, the discharge of Amede, a named Union organizer and active driver advocate, for the asserted reason of a minor not-at-fault accident, in the face of prior and continuing tolerance for accidents, would have the effect of discouraging employees from supporting the Union. The Board should so find, as alleged in the complaint (GCX 1(e)), that the discharge of Amede was because of his Union and protected activities in order to discourage employees from engaging in Union activities, and that Respondent would not have discharged him in the absence of these activities.

D. The ALJ Erred by Failing to Specify in the Remedy and Order that Respondent Expunge all Discipline Issued as a Result of the Protected Concerted Strike [Exception No. 4]

As found by the ALJ, some of the drivers were given warnings for falsifying their trip sheets for the day of the strike. (ALJD 3:1-2) Respondent provided no similar falsification warnings which issued other than for the strike. Timing supports an inference that this discipline was issued in response to the protected activity of a strike. Cf. *Mid-West Telephone Service, Inc.*, 358 NLRB No. 145, slip op. at 1 fn. 2, 18 (2012) (timing supported an inference where the employer learned shortly before that the employee gave an affidavit and was willing to testify); *Toll Mfg. Co.*, 341 NLRB 832, 833 (2004) (timing and abruptness of discipline were "persuasive evidence" of motive).

The "falsification" warnings would not have issued but for the protected strike. Although Respondent claims that lying on the trip sheet is falsification of a trip sheet, it does not punish for the falsification even when it reviews the trip sheets for other errors. (Tr.

239:1-25, 240:1-3) Respondent offered no evidence that it has issued discipline in the past for improper times recorded on a trip sheet. The discipline admitted into evidence shows that Respondent has ignored and failed to issue discipline where the entries demonstrated on their face that they had logged entries which were inconsistent with each other and which Respondent considered to be falsification. This included numerous occasions where the driver logged a one-hour break, but explicitly logged rides during that mandatory one-hour lunch.[5] Pino confirmed that Respondent generally does not perform a line-by-line review of the trip sheets, and only issued the discipline based on a review of the trip sheets because of what it considered a long break. (Tr. 80:8-15) Thus, Pino ignored numerous "falsifications" regarding breaks and trips when issuing other discipline, but took special care to issue discipline following the strike. The fact that Respondent did not issue discipline to other

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[5] Warning issued for no clock out (GCX 6(a)) but the corresponding trip sheet GCX 6(b) clearly states 6:30 to 7:30 pm lunch, and rides are logged at 7:18pm; warning issued for unsigned credit receipt (GCX 6(d)) but the corresponding trip sheet GCX 6(e), (f) clearly states 8 to 9 pm lunch, and rides are logged at 8:20 and 8:40 pm; warning for no clock out (GCX 6(h)) and the corresponding trip sheet GCX 6(i) lists lunch from 6:30 to 7:30 pm with rides logged at 7:00 and 7:20; warning issued for failing to get a credit card receipt signed by a customer (GCX 6(k)), and the corresponding trip sheet for May 27, 2011, lists lunch from 8 p.m. to 9 p.m. but rides are logged at 8:00, 8:37, and 8:52 (GCX 6(l)), and the corresponding May 26, 2011, trip sheet lists lunch from 10 p.m. to 11 p.m., but lists rides at 10:11, 10:26, and 10:43 (GCX 6(n)); warning issued for $62 short on daily turn in, and the corresponding trip sheet lists the mandatory lunch break at 6 p.m. to 7 p.m., but a ride is logged at 6:21 (GCX 6(p), (q)); warning issued for not clocking out, and the trip sheet shows lunch from 6 a.m. to 7 a.m. and a ride at 6:18 (GCX 6(r), (s)); warning issued for various reasons, and the trip sheet shows lunch from 6 a.m. to 7 a.m. and a ride at 6:29 (GCX 6(t), (u)); warning for not clocking out, and the trip sheet shows lunch from 8 p.m. to 9 p.m. and rides at 7:59 and 8:30 (GCX 6(w), (x)); warning for $35 short on daily turn in, and trip sheet shows rides at 7:50 and 8:30 with a lunch from 7:25 to 8:25 p.m. (GCX 6(y), (z)); warning for not clocking out, and trip sheet shows lunch from 7 p.m. to 8 p.m. and rides at 7:03, 7:25, and 7:55 (GCX 6(aa), (ab)); warning for several reasons and trip sheet shows lunch from 9 p.m. to 10 p.m. and rides at 8:59 and 9:17 (GCX 6(ac), (ad)); warning for not clocking out and unsigned credit card receipt, but the April 7 trip sheet shows lunch from 9:30 to 10:30 p.m. and rides at 10:05 and 10:26, the April 27 trip sheet shows lunch from 5:30 p.m. to 6:30 pm. and a ride at 5:58, and the April 29 trip sheet shows lunch from 8:30 to 9:30 p.m. with a ride at 8:38, and the April 30 trip sheet shows lunch from 7 p.m. to 8 p.m., and rides at 7:20, 7:41, and 7:50 (GCX 6(ae), (af), (ah), (ai), (aj)); warning issued for $100 short on daily turn in, and the trip sheet shows lunch from 7:30 to 8:30 p.m. and a ride at 7:50 (GCX (ak), (al)); warning issued for not clocking out, and the trip sheet shows lunch from 6:10 to 7:10 p.m. and rides at 6:25 and 6:56 (GCX 6(am), (an)); warning for not clocking out, and the trip sheet shows lunch from 6:10 to 7:10 p.m. and rides at 6:21 and 6:48 (GCX 6(ao), (p)); warning issued for not clocking out with corresponding trip sheet shows lunch from 6:10 to 7:10 p.m. and rides at 6:11 and 6:34 (GCX 6(aq), (ar)); warning for unsigned credit card receipt and trip sheet which shows lunch from 6:10 to 7:10 and rides at 6:29, 6:49 and 7:07 (GCX 6(as), (at)).

drivers who committed what Pino considered was "falsification," and considering that Respondent provided no evidence that it disciplined other drivers for falsification of trip sheets makes clear that Respondent would not have issued falsification discipline to the drivers but for their participation in the strike.

The Board should find that the drivers' participation in the protected strike was a motivating factor in Respondent's decision to issue the trip sheet falsification discipline. Further, the Board should find that Respondent has not met its burden of showing it would have issued the discipline in the absence of their participation in the protected strike. Thus, the Board should find that the ALJ's Remedy and Order were insufficient as it did not direct Respondent to expunge the discipline from its records and that it should be ordered to provide the appropriate notice to employees.

IV. CONCLUSION

Based on the foregoing, the General Counsel respectfully requests that the Board reverse the ALJ's erroneous rulings as set forth above, find that Respondent committed the additional violations of Section 8(a)(1), and (3) as discussed above, supplement the Remedy and Order, and affirm the remaining findings of the ALJ.

Dated at Las Vegas, Nevada, this 24th day of January 2013.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of BRIEF IN SUPPORT OF ACTING GENERAL COUNSEL'S EXCEPTIONS in SUN CAB, INC. d/b/a NELLIS CAB COMPANY, Case 28-CA-079813, was served by E-Gov, E-Filing, E-Mail and Facsimile, on this 24th day of January 2013, on the following:

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